

**United States Department of Labor
Employees' Compensation Appeals Board**

R.H., Appellant

and

**DEPARTMENT OF THE NAVY, MARINE
CORPS AIR STATION, Cherry Point, NC,
Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-1684
Issued: August 27, 2021**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 30, 2020 appellant, through counsel, filed a timely appeal from an August 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left leg condition causally related to the accepted February 12, 2020 employment incident.

FACTUAL HISTORY

On February 20, 2020 appellant, then a 55-year-old machinist, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2020 he injured his left calf muscle when his foot slipped off a foot bar while in the performance of duty. He stopped work on February 12, 2020.

In a February 20, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

In an undated note, a physician assistant noted that appellant was seen in the emergency department on February 12, 2020 and could return to work in three days.

A February 12, 2020 x-ray of appellant's left leg revealed no remarkable findings.

In a February 12, 2020 medical report, Dr. Meghan A. Cummins, Board-certified in emergency medicine, noted that appellant presented with left calf and ankle pain. He reported that appellant injured his left leg earlier that day at work while using a stomp shear machine when he misplaced his left foot and struck his left heel and calf on the machine's step. Appellant noted experiencing immediate pain along the affected area and stated that he was unable to bear weight. He complained of persistent pain despite no visible swelling. Dr. Cummins conducted a physical examination and reviewed the x-ray of the left leg, which revealed no evidence of fracture. She recommended placing appellant in a posterior left lower extremity splint from the knee down. Dr. Cummins diagnosed a left leg injury and left lower leg contusion.

In a February 13, 2020 report, Marianne Hagood, a nurse practitioner, noted that appellant injured his left calf at work on February 12, 2020 and diagnosed left lower limb pain. In a work status report of even date, an unidentifiable healthcare provider diagnosed a left leg injury and indicated that appellant could not return to work until reevaluation.

On February 17, 2020 Ms. Hagood diagnosed tightness of left gastrocnemius muscle. In a work status report of even date, an unidentifiable healthcare provider again diagnosed a left leg injury and indicated that appellant could return to work with restrictions.

In a February 19, 2020 duty status report (Form CA-17), an unidentifiable healthcare provider diagnosed tightness of left gastrocnemius muscle and provided work restrictions.

February 20, 2020 e-mail correspondence indicated that appellant's supervisor, E.K., saw appellant right after the alleged February 12, 2020 employment incident and was told that his foot slipped off the foot stomp bar on the mechanical shear that was used to cut metal. Appellant reported that he hit his left leg calf muscle. E.K. noted that he observed no cuts, bruises, or any bleeding from appellant's calf area or on his lower left leg. He suggested appellant apply a bag of

ice to his calf muscle in case there was some swelling. E.K. stated that he did not see any swelling, but saw that appellant was able to move his foot from side to side and forward and aft. Appellant reported that he could not put much weight on his foot, making it hard for him to walk. E.K. noted that appellant was sent to the hospital that day.

In a February 25, 2020 report, Ms. Hagood diagnosed left lower limb pain and tightness of left gastrocnemius muscle. In a work status report of even date, an unidentifiable healthcare provider again diagnosed a left leg injury and indicated that appellant could return to work with restrictions.

In a March 6, 2020 medical report, Dr. Julian C. Levin, Board-certified in family practice, noted that appellant reported that he still experienced pain and that his left calf turned into a yellowish color when stepping off to walk. He conducted a physical examination, which revealed no swelling on the left leg, but demonstrated difficulty walking. Dr. Levin diagnosed left lower limb pain, tightness of left gastrocnemius muscle, and left lower leg contusion. In an attending physician's report (Form CA-20) of even date, he again diagnosed left limb pain and tightness of left gastrocnemius muscle. Dr. Levin checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by an employment activity.

In a March 16, 2020 medical report, Dr. Danny C. Smith, an osteopath and family medicine specialist, reported that appellant's injury was improving, but that he was still experiencing difficulty walking on uneven surfaces. He conducted a physical examination and diagnosed "other symptoms and signs involving the musculoskeletal system." In a work status report of even date, an unidentifiable healthcare provider diagnosed a left leg injury and indicated that appellant could return to work with restrictions.

In a March 19, 2020 response to OWCP's development questionnaire, appellant noted that on the date of his injury, he was using a mechanical foot shear at work. He indicated that as he was stomping on the foot bar, his foot slipped off and the bar came up, hitting him in the left calf muscle area. Appellant asserted that pain was instantaneous and he could not put his foot down because of the pain. He alleged that his coworker, R.K., helped him to a chair before his supervisor arrived shortly. Appellant noted that he went to the emergency room later that day. He indicated that he had no prior problems with the left leg.

By decision dated March 24, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a valid medical diagnosis from a qualified physician in connection with his February 12, 2020 employment injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a March 6, 2020 work status report, Dr. Levin diagnosed a left leg injury and provided work restrictions.

In a March 23, 2020 medical report, Dr. Smith indicated that appellant was injured at work on February 12, 2020. He diagnosed left lower limb pain and tightness of left gastrocnemius muscle. In a work status report of even date, an unidentifiable healthcare provider noted that appellant could return to work with restrictions.

On April 10, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted copies of evidence previously of record. He also submitted an amended copy of Dr. Smith's March 16, 2020 report diagnosing left lower limb pain and tightness of left gastrocnemius muscle.

In a March 30, 2020 report, Amy Taylor, a nurse practitioner, diagnosed left lower limb pain and tightness of left gastrocnemius muscle.

In an April 6, 2020 medical report, Dr. Smith reiterated his diagnoses of left lower limb pain and tightness of left gastrocnemius muscle. In a work status report of even date, an unidentifiable healthcare provider noted that appellant could return to work with restrictions.

In an April 20, 2020 medical report, Dr. Carson Sanders, an orthopedic surgeon, noted that appellant reported that he slipped and fell at work in mid-February 2020, injuring the posterior aspect of his leg. He indicated that appellant was gradually getting better. Dr. Sanders conducted a physical examination and reviewed the magnetic resonance imaging (MRI) scan of the left ankle, which revealed normal results except for partial tearing of the posterior tibial tendon. He diagnosed left lower limb pain and a gastrocnemius tendon strain. Dr. Sanders further noted that appellant also likely sustained a partial gastrocnemius tendon tear.

In a May 28, 2020 medical report, Dr. Sanders noted that appellant's left leg was improving, recounting that appellant sustained a work-related injury in mid-February 2020. He reiterated his findings and diagnoses.

By decision dated August 27, 2020, OWCP's hearing representative modified the March 24, 2020 decision, finding that appellant had established valid medical diagnoses. However, the claim remained denied because the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted February 12, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

⁴ *Supra* note 2.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a left lower leg contusion causally related to the accepted February 12, 2020 employment incident.

In a February 12, 2020 medical report, the same day as the claimed employment injury, Dr. Cummins indicated that appellant presented with left calf and ankle pain. She recounted appellant's history of injury where he misplaced his left foot while using a stomp shear machine and struck his left leg on the machine's step. Dr. Cummins diagnosed left lower leg contusion. Similarly, in a March 6, 2020 report, Dr. Levin recounted the same history of the claimed February 12, 2020 employment injury and diagnosed left lower leg contusion. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.¹¹ As the evidence of record establishes diagnosed visible injuries, the Board finds that appellant has met his burden of proof to establish a left lower leg contusion causally related to the accepted February 12, 2020 employment incident.¹² The case will, therefore, be remanded for payment of medical expenses and any attendant disability.

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

¹² See *A.J.*, *id.*; see also *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

The Board further finds, however, that appellant has not met his burden of proof to establish additional medical conditions causally related to the accepted February 12, 2020 employment injury.

In a March 6, 2020 medical report, Dr. Levin also diagnosed left lower limb pain and tightness of left gastrocnemius muscle and indicated that appellant demonstrated difficulty walking. However, he did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ Moreover, the Board has also held that pain is a symptom and not a compensable medical diagnosis.¹⁴ Therefore, this report is insufficient to establish appellant's claim.

In medical reports dated April 20 and May 28, 2020, Dr. Sanders reported that appellant fell at work in mid-February 2020. He reviewed appellant's MRI scan of the left ankle and diagnosed a gastrocnemius tendon strain, noting that appellant also likely sustained a partial gastrocnemius tendon tear. However, Dr. Sanders had an inaccurate history of injury as OWCP accepted that appellant injured his left leg when his left foot slipped off the foot bar while operating a shear machine at work. As stated above, to establish causal relationship, the opinion of the physician must be based on a complete factual and medical background.¹⁵ The Board has held that medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹⁶ Dr. Sanders's reports are, therefore, of limited probative value and insufficient to establish appellant's claim.

In a Form CA-20 report dated March 6, 2020, Dr. Levin diagnosed left limb pain and tightness of left gastrocnemius muscle and checked a box marked "Yes" indicating that appellant's conditions had been caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.¹⁷ Moreover, pain is a symptom and not a compensable medical diagnosis.¹⁸ Similarly, in his March 6, 2020 work status report, Dr. Levin again failed to provide any medical diagnosis and/or an opinion on causal relationship. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *B.M.*, Docket No. 21-0198 (issued June 29, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁵ *Supra* note 10.

¹⁶ *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *J.K.*, Docket No. 20-0590 (issued July 17, 2020); *S.B.*, Docket No. 20-0088 (issued June 4, 2020); *S.T.*, Docket No. 18-1144 (issued August 9, 2019) (medical opinions based on an incomplete or inaccurate history are of limited probative value).

¹⁷ See *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

¹⁸ See *supra* note 15.

incident caused or aggravated a diagnosed condition.¹⁹ These reports are, therefore, insufficient to establish appellant's claim.

In his medical reports dated March 16, 23, and April 6, 2020, Dr. Smith noted diagnoses of left lower limb pain and tightness of left gastrocnemius muscle, but failed to offer a firm medical diagnosis. As his reports are insufficient to establish a medical diagnosis causally related to the accepted employment incident, they are of no probative value.²⁰

Appellant submitted an undated note from a physician assistant and reports dated February 13 through March 30, 2020 from nurse practitioners. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.²¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The record also contains work status reports dated February 13 through April 6, 2020 and a Form CA-17 report dated February 19, 2020. However, these reports contained illegible signatures from unidentifiable healthcare providers. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.²² Accordingly, these documents are also insufficient to satisfy appellant's burden of proof to establish his claim.

Lastly, appellant also submitted a February 12, 2020 left leg x-ray. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²³ As such, this evidence is insufficient to establish appellant's claim.

As the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed left leg conditions and the accepted February 12, 2020 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁹ A.R., Docket No. 19-1560 (issued March 2, 2020); V.B., Docket No. 19-0643 (issued September 6, 2019).

²⁰ *Id.*

²¹ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA); *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

²² *A.B.*, Docket No. 20-0971 (issued January 26, 2021); *J.P.*, Docket No. 19-0197 (issued June 21, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²³ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a left leg contusion causally related to the accepted February 12, 2020 employment incident. The Board further finds, however, that appellant has not met his burden of proof to establish additional medical conditions causally related to the accepted February 12, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 27, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board